

## § 301.7704-2

those debt obligations until the debt obligations issued by the entity are retired.

(2) *Governmental purpose.* The term governmental purpose means an essential governmental function within the meaning of section 115. A governmental purpose does not include the mere packaging of debt obligations for resale on the secondary market even if any profits from the sale are used in the performance of an essential governmental function.

(3) *Determinations by the Commissioner.* If an entity is not described in paragraph (a)(1) of this section, but has a similar purpose, then the Commissioner may determine that the entity is not classified as a taxable mortgage pool.

(b) *REITs.* [Reserved]

(c) *Subchapter S corporations—(1) In general.* An entity that is classified as a taxable mortgage pool may not elect to be an S corporation under section 1362(a) or maintain S corporation status.

(2) *Portion of an S corporation treated as a separate corporation.* An S corporation is not treated as a member of an affiliated group under section 1361(b)(2)(A) solely because a portion of the S corporation is treated as a separate corporation under section 7701(i).

[T.D. 8610, 60 FR 40092, Aug. 7, 1995]

## § 301.7704-2 Transition provisions.

See the regulations under section 7704 contained in part 1 of this chapter for a definition of the “substantial new line of business” that an “existing” publicly traded partnership cannot enter without forfeiting its partnership status under the transition provisions applicable to section 7704.

[T.D. 8450, 57 FR 58710, Dec. 11, 1992]

### General Rules

## Application of Internal Revenue Laws

### § 301.7803-1 Security bonds covering personnel of the Internal Revenue Service.

For regulations relating to the procurement of security bonds covering designated personnel of the Internal

## 26 CFR Ch. I (4-1-03 Edition)

Revenue Service between January 1, 1956, and June 6, 1972, see 31 CFR part 226.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[T.D. 7239, 37 FR 28628, Dec. 28, 1972]

## § 301.7805-1 Rules and regulations.

(a) *Issuance.* The Commissioner, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of the Code (except where this authority is expressly given by the Code to any person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity.* The Commissioner, with the approval of the Secretary, may prescribe the extent, if any, to which any regulation or Treasury decision relating to the internal revenue laws shall be applied without retroactive effect. The Commissioner may prescribe the extent, if any, to which any ruling relating to the internal revenue laws, issued by or pursuant to authorization from him, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Commissioner, under the direction of the Secretary, shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

## § 301.7811-1 Taxpayer assistance orders.

(a) *Authority to issue—(1) In general.* When an application is filed by the taxpayer or the taxpayer's duly authorized representative, in the form, manner and time specified in paragraph (b) of this section, the Ombudsman may issue a taxpayer assistance order if, in the determination of the Ombudsman, the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service, including action or inaction on the part of the Internal Revenue Service.

(2) *Issuance without an application.* The Ombudsman may issue a taxpayer assistance order in the absence of an application under section 7811(a).

(3) *Duly authorized taxpayer's representative.* A "duly authorized taxpayer's representative" is any attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(4) *Significant hardship*—(i) *Determination required.* A determination of significant hardship is required to be made by the Ombudsman prior to the issuance of a taxpayer assistance order.

(ii) *Term Defined.* The term *significant hardship* means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the Internal Revenue Service. Mere economic or personal inconvenience to the taxpayer does not constitute significant hardship.

(5) *Finding different from relief.* A finding that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service will not automatically result in relief being granted to a taxpayer under this section. A finding of "significant hardship" is separate and distinct from a determination that the taxpayer will be granted relief. The granting of relief requires an examination of the behavior of the taxpayer and of the action or inaction of the Internal Revenue Service that causes or is about to cause the significant hardship to the taxpayer.

(b) *Application for taxpayer assistance order*—(1) *Form.* The application for a taxpayer assistance order shall be made on a Form 911 (Application for Taxpayer Assistance Order to Relieve Hardship) available from any local office of the Internal Revenue Service or in a written statement which shall contain the following information:

(i) Name, social security number (or the employer identification number),

and current mailing address of the taxpayer submitting the application.

(ii) Kind of tax (individual, corporate, etc.) and tax period or periods involved.

(iii) Description of the Internal Revenue Service action or proposed action which is causing or is about to cause a significant hardship to the taxpayer and, if known, the Internal Revenue Service office and personnel involved.

(iv) Description of the specific hardship caused or about to be caused and the kind of relief requested.

(v) Signature of the taxpayer/applicant or duly authorized representative.

(2) *Manner.* An application for a taxpayer assistance order shall be filed with the Internal Revenue Service Problem Resolution Office in the district where the taxpayer resides. Overseas applicants having a APO or FPO address shall file applications with the Internal Revenue Service, Problem Resolution Office where the return was filed. All other overseas applicants shall file applications with the Internal Revenue Service, Problem Resolution Office, Assistant Commissioner (International), Washington, DC. Where appropriate, these Problem Resolution offices may refer an application for a taxpayer assistance order to another office of the Internal Revenue Service.

(3) *Time.* An application for a taxpayer assistance order shall be submitted within a reasonable time after the taxpayer becomes aware of the significant hardship or the potential significant hardship.

(c) *Contents of Taxpayer Assistance Orders*—(1) *Terms of order.* Upon deciding that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered, the Ombudsman may issue a taxpayer assistance order requiring the Internal Revenue Service to—

(i) Release levied property (to the extent that the Internal Revenue Service may by law release such property), or

(ii) Stop any action or refrain from taking further action against a taxpayer pursuant to:

(A) Chapter 64 (relating to collection),

(B) Chapter 70, subchapter B (relating to bankruptcy and receiverships),

(C) Chapter 78 (relating to discovery of liability and enforcement of title), or

(D) Any other section of the Internal Revenue Code under which the Internal Revenue Service is taking or is about to take administrative action against the taxpayer that causes or will cause a significant hardship.

(2) *Binding effect.* A taxpayer assistance order is binding on the Internal Revenue Service unless reversed by an official authorized to modify or rescind such an order as provided in paragraph (d) of this section.

(3) *Scope.* The terms of a taxpayer assistance order may require the release from levy of property of the taxpayer to the extent that the Internal Revenue Service will by law release such property. In the absence of an overpayment there is, for example, no authority under which the Internal Revenue Service may release sums which have been credited against the taxpayer's liability and deposited into the Treasury of the United States. A taxpayer assistance order may generally not be issued with respect to the investigation of any criminal tax violation and generally may not be issued to enjoin an act of the Office of Chief Counsel (with the exception of Appeals). A taxpayer assistance order will not be issued to contest the merits of any tax liability nor is a taxpayer assistance order intended to be a substitute for or an addition to any established administrative or judicial review procedure.

(d) *Authority to modify or rescind.* A taxpayer assistance order may be modified or rescinded only by the Ombudsman, a district director, a service center director, a compliance center director, a regional director of appeals, or the superiors of such officials. A modification or rescission by one of these designated officials may be elevated by the Ombudsman to the superior of such official.

(e) *Suspension of statutes of limitations—(1) In general.* The running of the applicable period of limitations for any action which is the subject of a taxpayer assistance order shall be suspended for the period beginning on the date the Ombudsman receives an application for a taxpayer assistance order in the form, manner, and time specified

in paragraph (b) of this section and ending on the date on which the Ombudsman makes a determination with respect to the application, and for any additional period specified by the Ombudsman in an order issued pursuant to a taxpayer's application. For the purpose of computing the period suspended, all calendar days except the date of receipt of the application shall be included.

(2) *Date of decision.* The "date on which the Ombudsman makes a decision with respect to the application" is the date on which the taxpayer's request for a taxpayer assistance order is denied, or agreement is reached with the involved function of the Service, or a taxpayer assistance order is issued (except that when the taxpayer assistance order is reviewed by an official who may modify or rescind the taxpayer assistance order as provided in paragraph (d) of this section, the decision date is the date on which such review is completed).

(3) *Periods suspended.* The periods of limitations which are suspended under section 7811(d) are those which apply to the taxable periods to which the application for a taxpayer assistance order relate or the taxable periods specifically indicated in the terms of a taxpayer assistance order.

*Example 1.* On August 31, 1989, the Internal Revenue Service levies on funds in the taxpayer's checking account. On September 1, 1989 (at which time 7 months remain before the period of limitations on collection after assessment will expire on April 1, 1990) the Ombudsman receives the taxpayer's written application for a taxpayer assistance order. Subsequently, on September 6, 1989, the Ombudsman determines that the levy has caused a significant hardship and the Internal Revenue Service function which served the levy agrees to release the levy. The levy is released. As a result of the application and the decision by the Ombudsman and the involved function of the Service resolving the hardship, the statute of limitations on collection after assessment is suspended from the date the Ombudsman received the application, September 1, 1989, until the date on which the decision was made to release the levy, September 6, 1989. Therefore, the statute of limitations on collection after assessment will not expire until after April 6, 1990, which is 7 months plus 5 days after the date on which the application for a taxpayer assistance order was received by the Ombudsman.

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*Example 2.* The facts are the same as in example 1 except that the Internal Revenue Service function which served the levy does not agree to release the levy, and the Ombudsman, having made a determination that the levy is causing a significant hardship, issues a taxpayer assistance order on September 6, 1989, in which the levy is ordered to be released and specifies that the statute of limitations on collection after assessment is suspended for an additional 15 days. The period of limitations on collection after assessment will therefore not expire until after April 21, 1990, which is 7 months and 20 days (5 days plus 15 days) after the application for the taxpayer assistance order was received by the Ombudsman.

*Example 3.* The facts are the same as in example 2 except that the Ombudsman does not specifically suspend the statute of limitations on collection after assessment for an additional number of days in the taxpayer assistance order, but rather the function seeks modification or rescission of the taxpayer assistance order and the appropriate official charged with that responsibility completes his consideration of the assistance order on September 8, 1989. The period of limitations on collection after assessment will therefore not expire until after April 8, 1990, which is 7 months and 7 days after the application for the taxpayer assistance order was received by the Ombudsman.

(4) *Absence of a written application.* The statute of limitations is not suspended in cases where the Ombudsman issues an order in the absence of a written application for relief by the taxpayer or the taxpayer's duly authorized representative.

(f) *Independent action of Ombudsman.* The Ombudsman may take any of the actions described in section 7811(b) in the absence of an application by the taxpayer.

(g) *Ombudsman.* The term "Ombudsman" includes any designee of the Ombudsman, such as Problem Resolution Officers in Internal Revenue Service regional and district offices and at Internal Revenue Service compliance and service centers.

(h) *Effective Date.* These regulations are effective as of March 20, 1992.

[T.D. 8246, 54 FR 11700, Mar. 22, 1989, as amended by T.D. 8403, 56 FR 9977, March 23, 1992]

### MISCELLANEOUS PROVISIONS

#### **§ 301.9000-1 Procedure to be followed by officers and employees of the Internal Revenue Service upon receipt of a request or demand for disclosure of internal revenue records or information.**

(a) *Authority.* The provisions of this section are prescribed under the authority of 5 U.S.C. 301; section 2 of the Reorganization Plan No. 26 of 1950, 64 Stat. 1280; 18 U.S.C. 1905; section 2(g) of the Federal Alcohol Administration Act (27 U.S.C. 202(c)); and sections 5274, 6103, 6104, 6106, 6107, 7213, 7237(e), 7803, and 7805 of the Internal Revenue Code of 1954.

(b) *Definitions.* When used in this section—

(1) *Internal revenue records or information.* The term "internal revenue records or information" means any records (including copies thereof) or information, made or obtained by, furnished to, or coming to the knowledge of, any officer or employee of the Internal Revenue Service while acting in his official capacity, or because of his official status, with respect to the administration of the internal revenue laws or any other laws administered by or concerning the Internal Revenue Service.

(2) *Internal revenue officer and employee.* The term "internal revenue officer and employee" means all officers and employees of the United States, engaged in the administration and enforcement of the internal revenue laws or any other laws administered by the Internal Revenue Service, appointed or employed by, or subject to the directions, instructions or orders of, the Secretary of the Treasury or his delegate.

(3) *Demand.* The term "demand" means any subpoena, notice of deposition either upon oral examination or written interrogatory, or other order, of any court, administrative agency, or other authority.

(c) *Disclosure of internal revenue records or information prohibited without prior approval of the Commissioner.* The disclosure, including the production, of